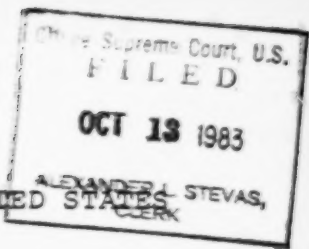


No. 82-1839



IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

ZELVERN W. MANN, ADMINISTRATOR OF THE ESTATE
OF ADA CREWS MANN, DECEASED,

Petitioner,
vs.

RICHARD GOLD, M.D., JOSHUA LEVY, M.D., JOHN
CARLSON, M.D., BERNARD STROHM, ADMINISTRATOR
UCLA HOSPITAL & CLINICS, ANDREA CRACCHIOLO III
M.D., STANLEY CASSAN, M.D.,

Respondents;

DAVID H. CANTER, LISA CARL, DALE GOLDFARB,
individually, DAVID H. CANTER, sole corpora-
tion, Lisa Carl sole corporation, HARRINGTON,
FOXX, DUBROW & CANTER a legal partnership;
JOSEPH A. WAPNER; DAVID N. EAGLESON, JUDGE,
JOHN COLE, JUDGE, PETER S. SMITH, JUDGE,

Respondents.

CONSOLIDATED FOR HEARING

BRIEF IN REPLY TO BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT.

Kenneth Crews Mann,
Attorney at Law,
Member of the Bar
of this Court;

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Petitioner,

vs.

RICHARD GOLD, M.D., et al., *Respondents &*

DAVID H. CANTER, etc., et al.. *Respondents.*

BRIEF IN REPLY TO BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT.

Respondents' Brief in Opposition to the
within Petition for Writ of Certiorari fails
to discuss Petitioner's California Code of
Civil Procedure Section 36 right to trial,
Petition p. 8, thereby admits this issue, as
does Respondents' APPENDIX, by omission.
Further, Joseph Wapner, by failing to reply,
admits Petitioner's allegations; he is not a
judge under *Bird vs. Superior Court*, 112 Cal.
App.3d 595, 598. All judicial defendants
fail to respond. Further, Respondents' brief

contains material misstatements of law and fact.

I. RESPONDENTS' LEGAL ARGUMENT

Respondents misstate the issues and the law, beginning with the first of their questions presented. Petitioner's state court action NWC76789 for wrongful death and intentional concealment of a death-producing injury, more than medical malpractice negligence, is not relitigated in *Mann vs. Gold*, a civil rights action.¹ The federal court misapplied *Polk County vs. Dodson*, 454 U.S. 312 (1981, Petition pp. 9, 23, 24, in *Mann vs. Canter*, claiming that Petitioner was suing the private attorney defendants for legal malpractice, Petition p. 35; Respondents evade this issue, as did the Ninth Circuit, Petition p. 13.

Respondents' second question presented argues evidence, although dismissal of *Mann*

¹THE "NOT TO BE PUBLISHED" opinion of the state Second District Court of Appeals evades discussion of the *stay* in effect when respondents filed their summary judgment motions. Respondents fail to admit the state court decision was a *default*, not on the merits. Petitioner is in the process of petitioning the State Supreme Court for hearing, and possibly this court on due process issues.

vs. Gold was on jurisdictional grounds. Further, Petitioner alleges, Petition p. 15, more than "mere" state employment; Medicare was charged over \$235,000 "for ... medical procedures not related to correction of her broken neck...." and that decedent was drugged in the hospital September, October and November, 1978 to conceal her death-producing condition, citing *Estelle vs. Gamble*, 429 U.S. 97 (1976). The deceit of Drs. Gold, Cracchiolo, et al., imprisoned decedent, without her consent, while her body was used in experimental operations in a state university hospital, Petition p. 14. Triable issues mandate trial on the merits, so this Court should find "color of state law" in the allegations of Petitioner.²

Respondents' third point again falsely claims relitigation of a state court "medical

²State Court defendant REGENTS OF THE UNIVERSITY OF CALIFORNIA by its insurance defense attorneys has prevented Petitioner from having a trial on the merits in NWC76789 and these federal actions. Under color of state law, Petitioner is deprived of his due process right to a trial on the merits.

malpractice action" in opposing Petitioner's attorney fees argument, p. 9 Opposition. But as we have shown, Petition p. 35, the district court did not know when it issued its ruling whether it was ruling on legal or medical malpractice, citing *Polk County vs. Dodson* erroneously in *Mann vs. Canter*, confusing it with *Mann vs. Gold*. Findings of fact and conclusions of law might have shown *why* the district court awarded attorney fees in one case; *Cohn vs. Papke*, 655 F.2d 191 and *Hughes vs. Rowe*, 599 U.S. at 14, Petition p. 21.

Respondents cite *Paul vs. Davis*, 424 U.S. 693 (1976) [96 S.Ct. 1155] for the holding that "conduct which is tortious under state law does not turn into a violation of federal civil rights law...", Brief in Opposition p. 8. But even in *Paul vs. Davis*, a case of defamation by police officers, the dissent by Justices Brennan, Marshall and White calls that *ex parte* trial and conviction of respondent Davis a violation of his rights under 42 U.S. §1983

and the Fourteenth Amendment. Now, Petitioner did not sue for defamation but for grievous deprivations by the state of his own and his decedent wife's rights under the U.S. Constitution to life and due process, in *Mann vs. Gold* and *Mann vs. Canter*, respectively.

The right to due process argued by the Petitioner under *Dennis vs. Sparks*, 449 U.S. 24 (1980), Petition pp. 23-29, is evaded and ignored by Respondents, who merely reiterate their trial court denials of wrongdoing, citing *Gifford vs. Travelers Protective Association*, 153 F.2d 209 (9th Circuit, 1946), Opposition Brief p. 11, for the proposition that Petitioner had the burden of proving, without any right to discovery of third party witnesses, evidence which would create a "genuine issue of material fact." But the Respondents ignore Petition APPENDIX E, showing that Magistrate Kronenberg ruled October 30, 1981 that Petitioner had good cause to

depose state court "referee" Joseph Wapner and deputy county clerks who could establish his felonious taking of the state court file in 1980; see Petition pp. 27, 28. Respondents present no legal authority countervailing that supporting the petition; therefore, it should be granted.

II. RESPONDENTS' FACTUAL ARGUMENTS

False statements of fact are contained in Respondents' Brief in Opposition to Petition for Writ of Certiorari, page 2, "Statement of the Case."

Because of the admitted personal bias and prejudice of J. Rittenband and J. Choate, Western District Los Angeles Superior Court, and facts presented to the Second Appellate District in Writ 2nd CIV 58870, the appeals court granted our writ and transferred the case away from the Western District. A third judge, J. Chernow, took himself off NWC76789, after proper challenge and grant of stay against him in consolidated case by the appeals court. Therefore, in the state case, of the six challenges for cause listed by Respondents, three were granted.

Respondents in-pro-per do not deny our charge of perjury against Patty Mortl,³ p. 9

³ Patty Mortl left HARRINGTON, FOXX, DUBROW & CANTER. Attorney Dale Goldfarb is a defendant herein.

of Petition. Nor do Respondents deny material facts presented in Petition pp. 4 through 9. Also, Respondents misquote from a questioned document, Opposition Brief p. 3, footnote 2, incorrectly attributing defendants' conduct to the Petitioner and his attorneys.⁴ The Respondents fail to respond to our charge of felony made against retired judge Joseph Wapner, Petition pp. 8, 28. Joseph Wapner's acts, Petition p. 30, are not denied, not defensible, but are beneath minimum due process requirements. The Respondents ignore Petition pp. 29-33, which set forth defendants' corrupt conduct, while continuing their *ad hominem* argument.

"The outlandish proceedings in the state trial court" (Opposition Brief, p. 3) unconstitutionally deprived the Petitioner of his due process rights in NWC76789 by striking all

⁴ Respondents improperly put photocopies of the incomplete depositions of Petitioner's attorneys into federal court; they are unsigned, never submitted, although we requested them repeatedly; therefore, they are not evidence under federal law.

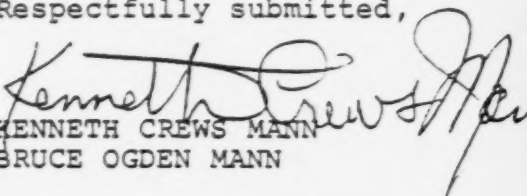
of the Petitioner's expert testimony and evidence and defaulting the Petitioner. Petitioner's expert, world-renowned neurosurgeon J. DeWitt Fox, M.D., F.A.C.S., by proper affidavit controverted defendants' motion papers, concluded that Ada Crews Mann would be alive if the defendant doctors had treated her broken neck instead of drugging her after she fell in U.C.L.A. Hospital x-ray room November 1, 1977, that said failure to treat her broken neck proximately killed her. The Respondents now admit Petitioner's decedent fell November 1, 1977, Opposition APPENDIX p. 9, but evade and ignore Respondent Dr. Andrea Cracchiolo's continued denials that she fell November 1, 1977.

Petitioner's expert George Campion, M.D., referred to in Opposition Brief p. 4, in sworn declarations on file in state court declared decedent had a broken neck while she was under the treatment of the Respondent doctors. Defendants' corruption of this expert caused

him to cast doubt on his earlier declarations, Opposition APPENDIX p. 10: "...the fact that she can turn her neck for the positioning of skull x-rays..." Petitioner had no opportunity because of the Respondents' undenied due process violations, to ask Dr. Campion if a technician might have turned the decedent's neck while she was unconscious.⁵

Respondents fail to show why the within Petition should not be granted.

Respectfully submitted,


KENNETH CREWS MANN
BRUCE OGDEN MANN

Attorneys for Petitioner

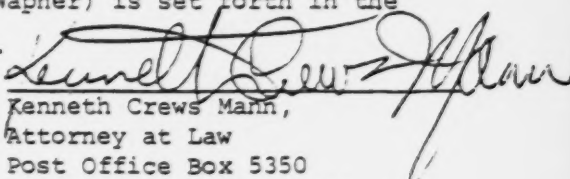
⁵ Defendants' [Respondents'] Campion deposition notice was for 1:30 p.m. August 10, 1981, but they held his deposition from 9 a.m. to 12:30 p.m. August 10, 1981, without Petitioners' attorneys present.

PROOF OF SERVICE

(F.R.C.P. Rules 19.3, 28.3)

I, Kenneth Crews Mann, one of the counsel of record for Zelvern W. Mann, Administrator of the Estate of Ada Crews Mann, hereby certify that, on the 12th day of October, 1983, I served one copy of the BRIEF IN REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI (a correction to space rule requirements of the same brief mailed October 6, 1983) on the law firm which is attorney of record, Respondent Dale B. Goldfarb, in pro-per, by mailing one copy in a duly addressed envelope, with first class postage prepaid to:

HARRINGTON, FOXX, DUBROW & CANTER, Attorneys
Dale B. Goldfarb and Mark W. Flory, One Wilshire Building, Suite 703, Wilshire at Grand, Los Angeles, CA 90017. I also mailed one copy in a duly addressed envelope, with first class postage prepaid to THE NINTH CIRCUIT COURT OF APPEALS.* It is further certified that all parties required to be served have been served, and that the list of such parties (including defaulting judicial parties and non-judicial party Wapner) is set forth in the caption of the petition.


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